

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

February 25, 2002

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. VA 2001-42
v.	:	A.C. No. 44-06889-03502 A TQI
	:	
TONY M. STANLEY, employed by	:	
MINE MANAGEMENT	:	
CONSULTANTS, INCORPORATED	:	

BEFORE: Verheggen, Chairman; Jordan and Beatty, Commissioners

## ORDER

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). On October 25, 2001, the Secretary of Labor filed with the Commission a petition for assessment of civil penalties against Tony M. Stanley, employed by Mine Management Consultants, Inc. (“MMC”), alleging that, as an agent of MMC, Stanley should be held liable pursuant to section 110(c) of the Mine Act, 30 U.S.C. § 820(c), for knowingly authorizing, ordering, or carrying out an alleged violation of 30 C.F.R. § 75.202(b) by MMC. Sec’y Proposed Assessment, Ex. A at 3. On November 13, 2001, the Secretary filed with Administrative Law Judge T. Todd Hodgdon a motion to consolidate the subject proceeding with the civil penalty proceeding involving MMC (Docket No. VA 2001-37). The judge did not rule on the motion to consolidate. He issued an Order to Show Cause on December 18, 2001, directing Stanley to file within 21 days an answer or an explanation of his failure to do so. On January 17, 2002, the judge issued a Default Decision dismissing this civil penalty proceeding for Stanley’s failure to answer the Petition for Assessment of Penalty or the show cause order. The judge assessed the civil penalty of \$600 proposed by the Secretary.

Stanley responded to the show cause order in a letter to the judge dated January 16, 2002, one day before the judge’s default order issued. The Commission received the letter on January

22, 2002. In the letter, Stanley explained that he did not timely respond to the judge's show cause order because he mistakenly believed that it was not necessary for him to do so if his case was consolidated with the case involving MMC. Stanley also answered the Secretary's allegations in the letter.

The judge's jurisdiction in this matter terminated when his decision was issued on January 17, 2002. 29 C.F.R. § 2700.69(b). Relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2); 29 C.F.R. § 2700.70(a). We deem Stanley's response to the show cause order as constituting a timely petition for discretionary review of the judge's default order,<sup>1</sup> which we grant. *See, e.g., Upright Mining, Inc.*, 9 FMSHRC 206, 207 (Feb. 1987).

We have observed that default is a harsh remedy and that, if the defaulting party can make a showing of adequate or good cause for a failure to respond to an order, the failure may be excused and proceedings on the merits permitted. *Mohave Concrete & Materials, Inc.*, 8 FMSHRC 1646, 1647 (Nov. 1986). On the basis of the present record, however, we are unable to evaluate the merits of Stanley's position. In particular, it is unclear from his request why he mistakenly believed that his case had been consolidated, or how such consolidation would relieve him of his obligation to file an answer in this case. In the interest of justice, we vacate the default order and remand this matter to the judge, who shall determine whether relief from default is warranted. *See Cent. Mt. Materials*, 23 FMSHRC 907, 907-09 (Sept. 2001) (remanding to judge where operator did not respond to Secretary's petition or judge's show cause order because apparently confused about Commission procedures); *Gen. Rd. Trucking Corp.*, 17

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<sup>1</sup> Stanley is proceeding pro se, and the Commission has generally held the pleadings of pro se litigants to less stringent standards than pleadings drafted by attorneys. *Marin v. Asarco, Inc.*, 14 FMSHRC 1269, 1273 (Aug. 1992) (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

FMSHRC 2165, 2165-66 (Dec. 1995) (same). If the judge determines that relief is appropriate, the case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

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Theodore F. Verheggen, Chairman

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Mary Lu Jordan, Commissioner

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Robert H. Beatty, Jr., Commissioner

Karen M. Barefield, Esq.

Office of the Solicitor  
U.S. Department of Labor  
4015 Wilson Blvd., Suite 516  
Arlington, VA 22203

Tony M. Stanley  
P.O. Box 188  
Burdine, KY 41517

Mine Management Consultants, Inc.  
P.O. Box 33  
Jenkins, KY 41537

Administrative Law Judge T. Todd Hodgdon  
Federal Mine Safety & Health Review Commission  
Office of Administrative Law Judges  
5203 Leesburg Pike, Suite 1000  
Falls Church, VA 22041